

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 11, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Ray Dwyer
Robert Bartholomew
Walter Schmidt
Tom Day
Nancy M. Bonniwell

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Mary E. Finet, Senior Land Use Specialist
Colleen Chapin, BA 09:043, petitioner
Michael and Ivy Patek, BA09:044, petitioners
Michael Bundy, BA09:044, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I move to approve the Summary of the Meeting of October 14, 2009.*

The motion was seconded by Mr. Schmidt and carried unanimously.

NEW BUSINESS:

BA09:043 TERRY AND COLLEEN CHAPIN:

Mr. Day *I move to approve the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the living area contained on both floors of the carriage house to be remodeled for continued use as a caretaker's residence and/or guesthouse. The Planning and Zoning Division staff also recommended approval of the request to modify a condition of approval imposed by the Waukesha County Board of Adjustment on August 1, 1984 (File No. BA84:078), on variances from the minimum lot size and lot

width requirements of the Waukesha County Shoreland and Floodland Protection Ordinance that were granted to permit a previous owner to re-configure two existing lots, changing the reference in the required deed restriction from “living quarters over the garage” to “living quarters in the detached garage/carriage house”. The recommended conditions of approvals were as follows:

1. Prior to the issuance of a Zoning Permit to remodel the carriage house, a Declaration of Restrictions shall be recorded in the Waukesha County Register of Deeds office. The Declaration of Restrictions shall contain a restriction that Lot 2 of Certified Survey Map No. 4677, recorded in Volume 37, Pages 297 - 299, may not be further divided and the living quarters in the detached garage/carriage house may not be leased or rented for human occupancy and may only be used as a caretaker’s quarters or as a guesthouse for the occasional occupancy of guests of the owners. The Declaration of Restrictions shall also indicate that the previously recorded Declaration of Restrictions (Document No. 1286695), recorded on February 19, 1985, is null and void.
2. The outer perimeter of the carriage house cannot be expanded and the living quarters in the carriage house cannot be further expanded into the garage area.
3. The cost of the currently proposed carriage house remodeling may not exceed 50% of the current fair market value of the structure. Prior to the issuance of a Zoning Permit, a detailed cost estimate for the proposed remodeling must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit to remodel the carriage house, an updated Plat of Survey, showing all existing structures, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed remodeling, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Although there is no reliable way to determine the cost of the previous remodeling of the living quarters in the carriage house and what percentage of the fair market value of the structure that cost represented, it is believed that it would have been a relatively small percentage of the fair market value. The approval of a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance, with the recommended condition that the cost of the currently proposed remodeling cannot exceed 50% of the current fair market value of the structure, will result a cumulative cost only slightly in excess of the 50% limit, which is in conformance with the purpose and intent of the Ordinance.

The approval of a modification to the 1984 condition of approval, changing the reference in the required deed restriction from “living quarters over the garage” to “living quarters in the detached garage/carriage house” is also in conformance with the purpose and intent of the Ordinance and with the intent of the previous Board of Adjustment decision. This modification will allow the petitioners to continue to use the carriage house as a caretaker’s quarters and/or a

guesthouse, keeping the small amount of living area on the first floor that has apparently existed for quite some time. The small additional living area on the first floor that was apparently added by a previous owner does not change the exterior of the building, except for the conversion of one of the garage doors to a patio door, and that patio door is on the back side of the building, not clearly visible from the road or from either of the adjacent lots. Allowing that first floor living area to remain and continue to be used as a part of the caretaker's quarters/guesthouse will not adversely affect the adjacent property owners and is not contrary to the public interest. Further, the Comprehensive Development Plan for Waukesha County recommends a density on the subject property of 1.5 acres to 2.9 acres per dwelling unit and having two dwelling units on this five (5) acre parcel is in conformance with that standard. Therefore, it would be unnecessary burdensome and serve no useful purpose to deny the request to modify the 1984 condition of approval to reflect that the living area in the carriage house is not located only on the second floor.

BA09:044 MICHAEL AND IVY PATEK:

Mr. Dwyer

I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report and for the reasons noted in our discussion.

The reasons noted by the Board during their discussion were as follows:

There is no hardship, other than a self-created or financial hardship, and self-created or financial hardships cannot be used to justify variances. A smaller shed for the storage of equipment could be constructed without variances. Although a smaller shed would not provide garage space for a recently purchased truck, the fact that the applicants purchased a truck that does not fit into their existing garage space is not justification for variances. The applicants currently have the equivalent of a five-car garage and the fact that they own more equipment than they have storage space for does not constitute a hardship.

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Bartholomew voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback and offset requirements of the Waukesha County Zoning Code, to permit the construction of a 14 ft. x 24 ft. detached garage/storage building.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted

purpose or would render conformity with such restrictions unnecessarily burdensome. In addition, unique physical conditions, which are not self-created, must exist on the property that prevent compliance with the Ordinance requirements, thereby causing a hardship and/or no reasonable use. Finally, it must be demonstrated that granting of the requested variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area.

Denial of the requested variances will not prevent the property from being used for the permitted purpose of single-family residential use and the applicants have not demonstrated that conformance with the Ordinance requirements would be unnecessarily burdensome. As pointed out by the applicants, the property has physical limitations and their options for locating a detached garage/storage building are limited by the lot configuration, the location of the existing buildings, the location of the septic system, the topography, and the presence of mature white spruce trees along the southeast lot line. Given the physical limitations of the property, the proposed location may be the best location for a 14 ft. x 24 ft. detached garage/storage building and it does not appear that the proposed location for such a building would adversely affect the general public interest or be detrimental to the nearby properties or the natural resources in the area, but a smaller storage building (less than 200 sq. ft.) could be located as close as 5 ft. to the side lot line and in conformance with the road setback requirements. While such a building may not provide additional storage for vehicles, as desired by the applicants, it would provide additional storage space in conformance with the locational requirements of the Ordinance. Further, even if there were no location in which to construct an additional detached garage/storage building, it is not unnecessarily burdensome to deny the requested variances, as the applicants currently have a two-car attached garage and a three-car detached garage. Therefore, approval of the requested variances would not be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA07:083 DAVE AND KAREN MEISTER:

Mr. Day

*I move to **approve** the request for a one-year extension to the time limit for the utilization of the variances granted on December 12, 2007, in accordance with the Staff's recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a one year extension to the deadline for utilization of the shore and floodplain setback variances granted by the Waukesha County Board of Adjustment on December 12, 2007, subject to the conditions of approval set forth on the Decision Sheet dated December 13, 2007.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The Ordinance has not changed with respect to the shore and floodplain setback requirements since the original decision. Therefore, it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions.

ADJOURNMENT:

Mr. Schmidt *I move to adjourn this meeting at 7:57 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment